IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CENTRAL EXCISE APPEAL NO.2 OF 2004

Union of India through Commissioner
of Central Excise & Customs ..Appellant.

V/s.

M/s.Kirloskar Oil Engines Ltd. ..Respondent.

Mr.R.V.Desai, senior counsel with Ms.Neeta Masurkar for appellant.

Mr.Prakash D. Shah for respondent.

CORAM : V.C. DAGA AND
J.P.DEVADHAR, JJ.

DATED : 24TH AUGUST, 2005.

P.C. :-

1. Heard the learned counsel appearing for the Revenue. The only question canvassed is that the amount of penalty imposed in the sum of Rs,50,00,000/- (Rupees fifty lacs only) could not have been reduced to Rs.20,00,000/- (Rupees twenty lacs only) by the Tribunal.

2. Heard Mr.R.V.Desai, learned senior counsel

appearing for the Revenue. He relied upon the provisions of section 11AC of the Central Excise Act, 1944 ('the Act' for short) read with Rule 25 of the Central Excise Rules, 2000 ('the Rules' for short) to contend that no discretion rests with the authority under the Act to reduce the amount of penalty.

3. Mr.Desai also contended that Rule 25 is identical with that of Section 11AC of the Act. He, therefore, submitted that if there is no discretion left to reduce penalty under section 11AC, then, one cannot read discretion in favour of the authorities under rule 25. He, thus, submits that there is no discretion left with the authority under the Act and Rules to reduce the amount of penalty.

4. Mr.Desai also sought to press into service one of the order of this Court admitting appeal being Central Excise Appeal No.4 of 2004 to contend that the similar question is pending for adjudication before this Court. Hence this appeal should be admitted and heard with that appeal. The question involved in that appeal is; whether the Tribunal was right in reducing the penalty, when section 11AC is mandatory in character. The question raised in this appeal rest on the interpretation of rule 25 and not section 11AC,

hence submission made in this behalf is without any merit.

5. The submissions made by Mr.Desai on other count are also misplaced for more than one reasons. So far as the first submission advanced by Mr.Desai with regard to interpretation of rule 25 in the backdrop of section 11AC of the Act is concerned, bare reading of section 11AC and Rule 25 side by side would be show that section 11AC does not provide for any discretion; whereas the rule 25 provides for discretion. Rule 25 itself contemplates higher and lower limit within which amount of penalty can be levied. The authorities are expected to levy penalty within the limits prescribed by the Rules. The rule thus prescribes for discretion in favour of the authorities while exercising the power in that rule.

6. The reliance placed by Mr.Desai on the Judgment of the Apex Court in the case of **Zunjarrao Bhikaji Nagarkar V/s. Union of India** reported in **1999(112) E.L.T. 772 (S.C.)** is also misplaced. In the very same Judgment (para 31), it has been held that no discretion is left with respect to the levy of penalty but with respect to amount or quantum of penalty is concerned, discretion is given to the authorities

concerned.

7. In the case on hand, the penalty has been imposed, what is reduced is the quantum or amount of penalty which is well within the discretion of the authorities under the Act. The Tribunal while exercising discretion in reducing the penalty has given reasons in support of its conclusions. In this view of the matter, we do not find that the discretion has been exercised either capriciously or in a perverse manner. The discretion appears to have been exercised on the basis of reasons mentioned in the order. The reasons mentioned and view taken is a reasonable and possible view in the facts of the case in question.

8. There is no substantial question of law involved in this appeal. The appeal, therefore, stands dismissed in limine with no order as to costs.

(V.C. DAGA, J.)

(J.P.DEVADHAR, J.)